

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

AARON SOTELO,

Plaintiff,

v.

No. 20-cv-0517 SMV/GBW

**SUR TRANSPORTE, INC., JIMMY HERNANDEZ,
LAUREANO P. ARDILA, ISABELLA AVILA, and
FAUSTINO ZAYAS,**

Defendants.¹

ORDER TO SHOW CAUSE

THIS MATTER is before the Court sua sponte. It appears that Plaintiff has abandoned the case. Even though the Court previously ordered Plaintiff to show cause for failure to serve Defendants, *see* [Doc. 5], Plaintiff has failed to serve Defendants or otherwise take any action in this case since November 11, 2020, *see* [Doc. 12]. Therefore, the Court will again order Plaintiff to show cause why the case should not be dismissed and set a hearing on the matter.

Plaintiff filed his original Complaint, which included Jimmy Hernandez as a Defendant, on May 29, 2020. [Doc. 1] at 1. Plaintiff had 90 days from filing the Complaint, or until August 27, 2020, to effect service of process on all Defendants, including Defendant Hernandez. Fed. R. Civ. P. 4(m). On September 18, 2020, the Court issued an Order to Show Cause, ordering Plaintiff to show good cause why his claims against Defendant Hernandez should not be dismissed

¹ Plaintiff's original Complaint named three Defendants: Sur Transporte, Inc., Jimmy Hernandez, and Laureano P. Ardila. [Doc. 1] at 1–2. On September 25, 2020, Plaintiff voluntarily dismissed his claims against Defendants Jimmy Hernandez and Laureano P. Ardila. [Doc. 8] at 1. On September 28, 2020, the Clerk entered default against Defendant Sur Transporte, Inc. [Doc. 10]. On November 11, 2020, Plaintiff filed his First Amended Complaint, adding Defendants Isabella Avila and Faustino Zayas and bringing Defendant Jimmy Hernandez back into the litigation. [Doc. 12] at 1–3.

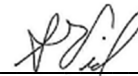
without prejudice for failure to comply with the service provision of Rule 4(m). [Doc. 5]. Plaintiff never responded to the Order to Show Cause and never filed any document on the record evidencing that service of process had been effected with respect to Defendant Hernandez. Instead, Plaintiff voluntarily dismissed Defendant Hernandez on September 25, 2020. *See* [Doc. 8]. Later, Plaintiff amended his complaint on November 11, 2020, and again named Jimmy Hernandez as a Defendant. [Doc. 12] at 1. Despite Plaintiff's voluntary dismissal and later amended complaint, the Rule 4(m) deadline to serve Defendant Hernandez remains August 27, 2020. *See Bolden v. City of Topeka*, 441 F.3d 1129, 1148–49 (10th Cir. 2006) (finding that the time period provided by Rule 4(m) does not restart with the filing of an amended complaint, except as to newly-added defendants). As to Defendants Avila and Zayas, Plaintiff had 90 days from filing the Amended Complaint, or until February 9, 2021, to effect service of process on all newly added Defendants. Fed. R. Civ. P. 4(m). Yet, there is no indication on the record that service of process has been effected with respect to Defendants Avila or Zayas.

Moreover, Plaintiff has failed to take any steps to prosecute his claims for 117 days, or since November 11, 2020. *See* [Doc. 12]. Accordingly, Plaintiff must show good cause within 30 days why his claims—that is, all his claims against all Defendants—should not be dismissed without prejudice pursuant to D.N.M.LR-Civ. 41.1 (allowing for dismissal where the plaintiff takes no steps to move his case forward for 90 days).

IT IS THEREFORE ORDERED that a telephonic Show-Cause Hearing be set for **Wednesday, March 17, 2021, at 1:30 p.m. MDT**. At the hearing, Plaintiff must show good cause why his claims against Defendants Hernandez, Avila, and Zayas should not be dismissed without prejudice for failure to comply with the service provision of Rule 4(m). *See Espinoza v. United*

States, 52 F.3d 838, 841 (10th Cir. 1995); *Bolden*, 441 F.3d at 1148–49. Additionally, at the hearing, Plaintiff must show good cause why this entire action should not be dismissed without prejudice as early as April 8, 2021, for failure to prosecute under D.N.M.LR-Civ. 41.1.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge